IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

KRISTINE BOSLEY, Plaintiff, v. EXCEL CORPORATION, a Delaware Corporation, d/b/a MBPXL Corporation, d/b/a Cargill Processed Meat Products, Defendant.	)	CIVIL NO. 4-96-CV-20267 **PRELIMINARY JURY INSTRUCTIONS**

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Dvt 70.01

PRELIMINARY INSTRUCTION NO. 1

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. Before the trial begins, however, there are certain instructions you should have in order to better understand what will be presented before you and how you should conduct yourself during the trial.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will instruct you on the law that you must follow and apply in deciding your verdict.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration, bearing in mind that I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to his or her testimony. During the trial, however, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial.

During the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the attorneys to object when they believe evidence is not properly

admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to confer with the lawyers out of your hearing with regard to questions of law or procedure that require consideration by the court alone. On some occasions you may be excused from the courtroom for the same reason. I will limit these interruptions as much as possible.

ICJ 100.1

PRELIMINARY INSTRUCTION NO. 2

Members of the jury: This is a civil case brought by the plaintiff, Kristine Bosley, formerly known as Kristine Johnson, against the defendant, Excel Corporation.

On or about July 5, 1990, the plaintiff was hired to work in the defendant's pork processing plant in Ottumwa, Iowa. Plaintiff alleges that beginning in late December 1993, through May 13, 1994, she was subjected to sexual harassment by her estranged husband, Rock Johnson, a co-employee. Plaintiff claims she reported the sexual harassment to Defendant's management personnel, but they did nothing to stop the harassment.

On May 13, 1994, Defendant indefinitely suspended Plaintiff from her job following two incidents at work. Plaintiff alleges Defendant terminated her employment because of her sex and in retaliation for her complaints about being sexually harassed.

Defendant denies Plaintiff's claims and asserts it took proper action to remedy the harassment alleged by Plaintiff.

This summary is given to you by the Court and is not to be considered as evidence in this case. Determine the questions submitted to you from the evidence and apply the law that I will give you.

Dvt 71.04

PRELIMINARY INSTRUCTION NO. 3

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Corporations and governmental entities have the same standing as private individuals. All the parties and the public expect that, regardless of the consequences, you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

Dvt 70.02

PRELIMINARY INSTRUCTION NO. 4

The case will proceed in the following order:

First, the plaintiff and defendant may make opening statements outlining their cases. None of the parties is required to make an opening statement. What is said in opening statement is not evidence; in opening statement a party outlines the evidence it intends to produce.

Second, the plaintiff will introduce evidence and testimony to support her claim. At the conclusion of plaintiff's case, the defendant may introduce evidence. The defendant, however, is not obliged to introduce any evidence or to call any witness. If defendant introduce evidence, the plaintiff may then introduce rebuttal evidence.

Third, the parties may present closing arguments as to what they consider the evidence has shown and as to the inferences that they contend you should draw from the evidence. What is said in closing argument, just as what is said in opening statement, is not evidence. The arguments present the contentions of the parties based on the evidence introduced. Plaintiff has the right to open and close the argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will proceed with your deliberations. You will not be sequestered during deliberations, but will work at the courthouse during the hours you decide.

ICJ 100.9, 100.11-.14

PRELIMINARY INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory; any motives that witness may have for testifying a certain way; the age and manner of the witness while testifying; whether that witness said something different at an earlier time; the general reasonableness and probability or improbability of the testimony; and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. Thus, you should consider whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the

party previously said was true.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion and all the other evidence in the case.

An expert witness may be asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

ICJ 100.4
Dvt 72.03

PRELIMINARY INSTRUCTION NO. 6

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness. The other is indirect or circumstantial evidence--the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence. The law simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated--that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, comments by the lawyers, and questions asked by a lawyer but not answered by the witness are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I strike from the record or tell you

to disregard is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence.

ICJ 100.3, DVT 5.01 (modified)

PRELIMINARY INSTRUCTION NO. 7

Unless you are otherwise instructed in these instructions, your verdict depends on whether you find certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

Generally, a plaintiff asserting a claim of sexual harassment in the workplace, also called a hostile-work-environment claim, must prove all of the following propositions by a preponderance of the evidence:

1. She or he was subjected to unwelcome harassment;
2. The conduct was based on sex;
3. The harassment was sufficiently severe or pervasive the plaintiff and a reasonable person under similar circumstances would find it created a hostile or abusive work environment;
4. The harassment would affect a term, condition, or privilege of a reasonable person's employment;
5. Defendant's management level employees knew or should have known of the harassment;
6. Defendant failed to take appropriate remedial action.

Factors relevant to the determination of whether conduct constitutes sexual harassment include the following:

1. The frequency of the discriminatory conduct;
2. Its severity;

3. Whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and

4. Whether the conduct unreasonably interferes with an employee's work performance.

Generally, a plaintiff asserting a claim that she or he was treated differently in the workplace because of the plaintiff's sex, also called a disparate-treatment claim, must prove all of the following propositions by a preponderance of the evidence:

1. First, the defendant discharged the plaintiff, or made another employment decision adverse to the plaintiff; and

2. Second, the plaintiff's sex was a motivating factor in the defendant's decision.

Generally, a plaintiff asserting a claim that a defendant retaliated against him or her as the result of the plaintiff's opposition to any unlawful employment practice, such as sexual harassment or disparate treatment, must prove all of the following propositions by a preponderance of the evidence:

1. First, the plaintiff was engaging in protected activity or opposition to an unlawful employment practice;

2. Second, the plaintiff suffered an adverse employment decision; and

3. Third, there was a causal link between the plaintiff's activity and the employment decision.

ICJ 100.5-100.8

PRELIMINARY INSTRUCTION NO. 8

During the trial of this case, certain testimony may be read into evidence or shown as a videotape of a deposition. A deposition is taken before trial, consists of questions asked the witness and the witness's answers given under oath, and is preserved in writing or on videotape. You should consider deposition testimony the same as you would testimony given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

The parties may serve upon each other written requests for the admission of the truth of certain matters of fact. You will regard as being conclusively proved all such matters of fact which were expressly admitted by a party or which a party failed to deny.

The parties may stipulate that if a certain person were called as a witness, he or she would testify as stipulated. Consider stipulated testimony as if it had been given in court.

Dvt 70.13

PRELIMINARY INSTRUCTION NO. 9

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court or counsel in arriving at your own findings as to the facts.

Dvt 70.08

PRELIMINARY INSTRUCTION NO. 10

During this trial I will permit you to take notes. Many courts do not permit jurors to take notes, and a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory, and you should not compare your notes with the notes of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

Dvt 70.08

PRELIMINARY INSTRUCTION NO. 11

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit any third person to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the court as soon as you are able. You should not, however, discuss with other jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third, during the time you serve on this jury, please do not converse, in or out of the courtroom, with any of the parties or their attorneys or any witness. By this I mean not only do not converse about the case, but do not converse at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.